



DEPARTMENT OF LAW
OFFICE OF THE
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Phoenix, Arizona 85007

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R76-6

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76-46

Honorable A. V. "Bill" Hardt
Arizona State Senator
Senate Wing
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Dear Senator Hardt:

In your letter of December 30, 1975 you requested our informal opinion concerning a proposed amendment to Article IX, §2, as follows:

- 1) Currently there exist three complementary versions of Article 9, Section 2, of the Arizona Constitution. Can a constitutional amendment to only one version of Article 9, Section 2, be proposed (assuming it does not conflict with the other two versions) and if approved by the voters be considered valid?
- 2) If the answer to number (1) above, is yes, would the approval of such an amendment constitute a repeal of the remaining two versions of Article 9, Section 2?

This office has examined the proposed legislation amending Article IX, §2, to blend the three prior amendments passed by the voters in the 1968 general election and to add a widower's exemption.

The manner of amending the Constitution is governed by Article XXI, §1, and A.R.S. §§ 19-123 and 19-125. Article XXI, §1, gives the Legislature the power to propose amendments to the Constitution. In order to become effective, the amendments have to be approved by the voters at either a general or special election. Under the provisions of A.R.S. § 19-125, it is not necessary to set forth the complete text of the proposed amendment on the ballot. However, the complete text, complete with deletions and additions, must be set forth in toto in the publicity pamphlet. A.R.S. § 19-123.



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It should be noted that the blending of the three amendments has already been accomplished by the Court of Appeals in Hood v. State of Arizona, No. 1 CA-CIV 2583. The Supreme Court denied review and the decision of the Court of Appeals is now final. A copy of that opinion is attached for your perusal.

The Court ruled that the effect of H.C.R. 1 was to restrict the veteran's exemption, to add the provision excluding property conveyed to evade taxation from exemption, and to organize § 2 into three subsections. The Court further ruled that the effect of S.C.R. No. 2 was to exempt non-commercial household goods. Lastly, the effect of H.C.R. No. 3 was to restrict the widow's exemption, add the provision excluding property conveyed to evade taxation from exemption, and to organize § 2 into three subsections. The Court ruled that as all three amendments had passed; they were to be read together to form a cohesive and workable whole.

The Court has therefore given effect to all three amendments and blended them to require the most restrictive widow's and veteran's exemptions. Since the Court has by its decision already blended the three prior substantive amendments, it is not essential that an amendment blending the 1968 amendments be enacted merely to have one version of Article IX, §2. However, it is proper to amend the Constitution for purposes of reorganization, which would include blending.

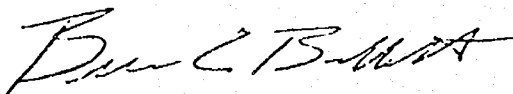
In light of the Court's ruling in Hood, that the only valid Article IX, § 2, is a blended version, it would be improper to choose one version to which to make additional substantive amendments. Additionally, however, in the proposal of amendments to the Constitution, the requirement of A.R.S. §19-123 that the publicity pamphlet set forth the provision as it will read after amendment showing additions and deletions must be met. Thus, if only one version of Article IX, § 2, were presented with the substantial changes, the publicity pamphlet would not be in compliance with A.R.S. § 19-123. For this reason, it would not be proper to select one "version" for amendment.

This does not mean that the Legislature can on its own initiative blend the three amendments. The power to combine and blend amendments for publication does not extend to constitutional amendments. A.R.S. § 41-1304.03. Amendments must be submitted to the public for a vote. Thus, when a substantive amendment is contemplated, it is proper to include a proposed reorganization or blending of the prior amendments in order to comply with A.R.S. § 19-123. Care must be taken in the instant case to comply with the Hood decision.

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Since it is improper to select one "version" for amendment, as all must be read together, it is not necessary to answer the second question posed in your letter. It is, of course, an established principle that repeals by implication are not generally favored. This would be especially true for the Constitution. However, the selection of one "version", when A.R.S. § 19-123 requires the publication of the provision as it will read after amendment setting forth the deletions and additions, would raise a serious question as to the validity of the two remaining "version". In any case, confusion has already resulted from the continued publication by West Publishing Company of three different versions of Article IX, §-2. To select only one version for amendment would only create further confusion.

Very truly yours,



BRUCE E. BABBITT
Attorney General

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Enclosure